

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MAIN ST PROPERTIES LLC, and
PATRICK SHANNON,

Plaintiffs,

vs.

CITY OF BELLEVUE, NEBRASKA, BREE
ROBBINS, DARRYL KUHLMAN, JANE
AND JOHN DOES, and SUSAN KLUTHE,

Defendants.

8:20CV278

MEMORANDUM AND ORDER

This matter is before the Court on the defendants' motion to strike, [Filing No. 23](#) the plaintiffs' second amended complaint, [Filing No. 22](#), and on defendants' motion to dismiss, [Filing No. 20](#), the plaintiffs' amended complaint, [Filing No. 15](#). This is an action for deprivation of civil rights under 28 U.S.C. § 1983 and for state law violations in connection with a zoning dispute..

The defendants' motion to dismiss is directed at the plaintiffs' amended complaint.¹ In response to defendants' motion to dismiss, the plaintiffs filed a second amended complaint. [Filing No. 22](#). The defendants move to strike the plaintiffs' second amended complaint, contending it was filed without leave of court in contravention of [Federal Rule of Civil Procedure 15](#). The plaintiffs oppose the motion to strike, arguing that they may amend their complaint once without leave of court as a matter of right, and they had leave of court to file their first amended complaint.

¹ The plaintiffs earlier sought leave to supplement their initial pleading to add allegations of events that occurred subsequent to the filing of their complaint under [Federal Rule of Civil Procedure 15\(d\)](#). [Filing No. 13](#). In a text order, the magistrate judge granted the motion pursuant to [Federal Rule of Civil Procedure 15\(a\)\(1\)](#) and ordered the plaintiffs to file an amended complaint on August 5, 2020. [Filing No. 14](#).

[Federal Rule of Civil Procedure 15\(a\)\(2\)](#) “allows a party to amend a complaint with the Court’s leave and directs the Court to ‘freely give leave when justice so requires.’” [Coleman v. Lakeview Loan Servicing, LLC](#), No. 19-CV-1168 (DWF/HB), 2020 WL 1922569, at *2 (D. Minn. Apr. 21, 2020) (quoting [Fed. R. Civ. P. 15](#)). The Court finds it need not determine whether or not the plaintiffs would be permitted to file the pleading as a matter of right, because the Court will construe the plaintiffs’ opposition to the defendants’ motion to strike as a motion for leave to file a second amended complaint. The Court finds that the plaintiffs should be granted such leave. The amended complaint may potentially cure any alleged infirmities identified in the defendants’ motion to dismiss. Therefore,

IT IS HEREBY ORDERED that:

1. The defendants’ motion to strike ([Filing No. 23](#)) is denied.
2. The plaintiffs opposition ([Filing No. 25](#)) is construed as a motion for leave to file a second amended complaint and is granted.
3. The plaintiffs’ second amended complaint ([Filing No. 22](#)) is deemed filed instant.
4. The defendants’ motion to dismiss ([Filing No. 20](#)) is denied as moot.
5. The defendants shall answer or otherwise plead within twenty-one days of the date of this order.

Dated this 8th day of October 2020.

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge